

Actions Needed to Resolve Construction Delays at the Counter-Narcotics Justice Center



August 27, 2009

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**OFFICE OF THE SPECIAL INSPECTOR GENERAL FOR
AFGHANISTAN RECONSTRUCTION**

August 27, 2009

The Honorable Karl W. Eikenberry
U.S. Ambassador to Afghanistan

David T. Johnson
Assistant Secretary, Bureau of International Narcotics and Law Enforcement Affairs
U.S. Department of State

Colonel Michael McCormick
Commander, Afghanistan Engineering District
U.S. Army Corps of Engineers

This report presents the results of our review of delays in the construction of a detention facility at the U.S.-funded Counter-Narcotics Justice Center in Kabul, Afghanistan. The Center is a key component of U.S. and Afghan counter-narcotics efforts and addressing delays in the construction of the detention facility is critical to the successful operation of the Center. Consequently, the report includes two recommendations for the State Department's Bureau of International Narcotics and Law Enforcement Affairs to expedite the construction of that facility.

A summary of our report is on page ii. The audit was conducted by the Office of the Special Inspector General for Afghanistan Reconstruction (SIGAR) under the authority of Public Law 110-181 and the Inspector General Act of 1978, as amended. When preparing the final report, we considered written comments from the Department of State's Bureau of International Narcotics and Law Enforcement Affairs and the U.S. Army Corps of Engineers - Afghanistan Engineer District on a draft of this report, and incorporated as appropriate. Copies of their comments are included in appendices II and III of this report.

John Brummet
Assistant Inspector General for Audits
Office of the Special Inspector General for Afghanistan Reconstruction

SIGAR RESULTS

What SIGAR Reviewed

The U.S.-funded \$11 million Counter-Narcotics Justice Center in Kabul, Afghanistan, is a key component of U.S. and Afghan counter-narcotics efforts. The Center opened earlier this year, three years behind schedule, and has already reached capacity. The construction of additional facilities is critical for the successful operation of the Center. This report identifies factors that have contributed to delays in expanding the Center's detention and support facilities under a \$2 million interagency support agreement between the Department of State's Bureau of International Narcotics and Law Enforcement Affairs and the U.S. Army Corps of Engineers - Afghanistan Engineer District. We conducted our review in Kabul, Afghanistan and Washington, D.C. in July 2009. Our work was conducted in accordance with generally accepted government auditing standards. This report is the first in a series of SIGAR audits addressing U.S. efforts to deter corruption and strengthen the rule of law.

What SIGAR Found

Detention facilities at the Counter-Narcotics Justice Center, which became fully operational in May 2009, have already reached capacity and narcotics-related offenders are being sent to other locations. Plans to construct additional detention and support facilities at the Center have been delayed for almost 18 months because of insufficient funding and inadequate utilities. New construction has not begun because the U.S. Army Corps of Engineers was not able to secure any construction bids within the funding amount provided by the State Department under a \$2 million interagency support agreement. In addition, according to Army and State Department engineers, new detention facilities would require upgrades to water, sewer, and electrical utilities because expansion would overtax the existing capacity of those utilities. Although the Corps of Engineers and the State Department agreed that utility upgrades should be completed prior to the construction of the new facilities, the Corps has not proceeded with those upgrades because they were not included in the original scope of work and because of questions regarding the validity of the appropriated funds. Delays in expanding the capacity of the Counter-Narcotics Justice Center, which has exclusive nationwide jurisdiction over significant narcotics cases, could impact U.S. and Afghan government efforts to combat the illicit drug trade in Afghanistan. Moreover, \$1.4 million in appropriated U.S. funds to support these efforts remain unused.

What SIGAR Recommends

To expedite the construction of additional detention and support facilities at the Counter-Narcotics Justice Center in Kabul, we recommend that the State Department amend the original interagency support agreement's scope of work to include the recommended utility upgrades. We also recommend that the State Department either increase the amount of funding under that interagency support agreement to cover additional costs of planned detention and support facilities, or issue a new agreement to include the necessary amount of funding.

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Abbreviations

SIGAR Special Inspector General for Afghanistan Reconstruction

ANDS Afghanistan National Development Strategy

Actions Needed to Resolve Construction Delays at the Counter-Narcotics Justice Center

This report identifies factors that have contributed to delays in the construction of additional detention facilities at the recently opened \$11 million U.S.-funded Counter-Narcotics Justice Center in Kabul, Afghanistan. Our work focused on \$2 million provided under a 2007 interagency support agreement between the U.S. Department of State's Bureau of International Narcotics and Law Enforcement Affairs and the U.S. Army Corps of Engineers-Afghanistan Engineer District for additional construction at the Center. The Center houses Afghanistan's sole court for the prosecution and appeal of significant narcotics cases; therefore, delays in expanding the capacity of the Center could negatively impact U.S. and Afghan government efforts to combat the illicit drug trade in Afghanistan. A major goal of the Afghanistan National Development Strategy (ANDS) is "eliminating the narcotics industry, which remains a formidable threat to the people and state of Afghanistan, the region and beyond." One of the key benchmarks under the ANDS Governance, Rule of Law and Human Rights Pillar is that the Afghan Government will "increase the number of arrests and prosecutions of drug traffickers and corrupt officials." Since the Center houses the Central Narcotics Tribunal, which has exclusive nationwide jurisdiction over significant narcotics cases, the Center's successful operation has a direct impact on the prosecutions of drug traffickers.¹

This report is the first in a series of SIGAR audits addressing U.S. efforts to deter corruption and strengthen the rule of law. We conducted our work in Kabul, Afghanistan and Washington, D.C. in July 2009 in accordance with generally accepted government auditing standards. A discussion of our scope and methodology is in Appendix I.

BACKGROUND

The United States recently completed construction of the first phase of an \$11 million Counter-Narcotics Justice Center to support ongoing narcotics interdiction efforts by the Afghan Government. The Center is a dedicated secure facility constructed by the U.S. Department of Defense that provides a centralized location for the Afghan Government to prosecute and detain narcotics offenders. It houses Afghanistan's Central Narcotics Tribunal, which has exclusive nationwide jurisdiction over significant narcotics cases, and the Criminal Justice Task Force consisting of Afghan prosecutors and investigators who receive mentoring by Department of Justice advisors.

The first phase of construction was completed three years behind schedule, not becoming fully operational until May 1, 2009. Currently, the Center consists of a detention building, courthouse, offices for judges and prosecutors, and barracks for members of the protective Afghan Marshals Service. The detention building contains 28 cells that can accommodate a total of 56 prisoners with two prisoners per cell. The courthouse includes courtrooms for primary and appellate courts and chambers that accommodate 14 judges—7 for the primary court, including a chief judge, and 7 for the appellate court, including a chief judge. There are also offices for 35 investigators and 30 prosecutors, a dining facility, two diesel-powered generators for electricity, and barracks for 150 members of the Afghan Marshals

¹ The Central Narcotics Tribunal has jurisdiction over cases involving more than 2kg of heroin, morphine or cocaine, more than 10kg of opium and more than 50kg of hashish or precursors chemicals.

Service. Located near the Kabul International Airport, the Center will receive two years of operations and maintenance support from the State Department estimated at \$3 million per year.

The second phase of construction for the Center was to include the design and construction of an additional detention facility and another set of barracks. In May 2007, the State Department and the Army Corps of Engineers signed an interagency agreement for the provision of goods and services related to the construction of facilities in support of State Department programs in Afghanistan. The agreement, pursuant to section 632(b) of the Foreign Assistance Act of 1961, as amended, was valid until May 2010, or until a maximum ceiling amount of \$50 million had been reached.

According to the interagency agreement, requests from the Department of State for U.S. Army Corps of Engineers assistance were to be documented by support agreements containing, among other things, a final statement of work, as well as a timeline for acquisition, design and construction. Each support agreement was to address a separate project and specify the amount of funds to be obligated on that particular project. The fiscal terms of the interagency agreement stated that the obligation of funds would be based upon the support agreements.

In accordance with the interagency agreement, the State Department prepared a support agreement to fund the construction of additional detention and barracks facilities for the Counter-Narcotics Justice Center.² The support agreement provided the Army Corps of Engineers with \$2 million to complete the work by January 2008. The scope of work included in the support agreement called for the design and construction of an additional 175-bed detention facility, support functions for the new detention facility, and barracks for 60 local national security officers. The overall project was defined as “the design, material, labor, and equipment to construct buildings, parking, utilities and other infrastructure in support of managing defendants awaiting trial.” All construction done under the scope of work was to meet current U.S. design and building codes, safety and security standards, and applicable local standards. Further, the design of the detention facility was to be in accordance with the latest American Correctional Association standards for quality.



Photograph of a courtroom used to adjudicate narcotics-related cases at the Counter-Narcotics Justice Center. (Source: SIGAR)

² According to records reviewed by SIGAR, support agreement 2078728M32 was signed by a Department of State representative on May 2, 2007 and electronically signed by an Army Corps of Engineers representative on February 6, 2008.

INSUFFICIENT FUNDING AND INADEQUATE UTILITIES CONTINUE TO DELAY CONSTRUCTION

Although the Center has only been fully operational for three months, its existing detention cells are already filled to capacity and nearly eighteen months have passed without the anticipated construction of an additional detention facility or the necessary upgrading of utilities.³ Due to expected high demand, the Afghan commander of the Center is considering putting four prisoners in each cell rather than two—a move that could violate American Correctional Association standards for quality.⁴ Newly arrested narcotics offenders were being sent to other locations because there was no available detention space at the Center.

Although some work was accomplished under the second phase of construction at the Center, the construction of an additional detention facility, scheduled to be completed by January 24, 2008, had not been started as of July 2009, due to several factors:

- The Army Corps of Engineers was unable to secure any bids within the funding amount allotted for the new detention facility.
- Army and State Department engineers determined that the additional detention facility would overtax the existing Center's water, sewer, and electrical utilities and recommended that utility upgrades be done before constructing the new detention facility.
- Although State Department officials agreed with that recommendation, the Corps did not proceed because the utilities work was not included in their original scope of work and because Corps officials believed that the funds provided under the interagency agreement had expired and were no longer valid.

Insufficient Funding Resulted in Lack of Acceptable Bids

The Army Corps of Engineers used about \$600,000 of the \$2 million to complete or repair work from the Center's original construction and to construct a new set of barracks. However, the Corps was unable to obtain a bid to construct the additional detention facility within the remaining amount provided under the original support agreement with the State Department. According to Corps officials, all bids that were submitted in response to its request for proposal to build the new detention facility were above the amount provided under the original support agreement. Consequently, the Corps did not accept any bids and did not begin construction of the new detention facility as planned.

Additional Detention Facility Would Overtax Existing Utilities

Further complicating the delayed construction of the new detention facility was the fact that, during final inspection and after analyzing the construction site, State Department and Corps engineers, respectively, determined that the additional facility would overtax the Center's existing sewer, water, and electrical utilities. Engineers from both agencies recommended that those utilities be upgraded.

³ According to State Department officials, the majority of detainees are low-level drug criminals, whereas the Center was originally developed to house mid- and high-level drug traffickers. This issue will be addressed in a separate SIGAR letter report to be issued to U.S. Embassy-Kabul later this month.

⁴ American Correctional Association standards require 4.6 square meters (50 sq ft) of unencumbered space for each two-person cell.

Specifically, the engineers found that the existing sewer system, which was designed to accommodate about 200 personnel, required daily emptying by sewage trucks and would be immediately overloaded with the additional personnel expected to occupy the new facility. With regard to water, the engineers found that, although the existing well pump capacity could supply the average daily water demands for the projected population of people, there was no additional capacity, test results indicated that the water was saline, and the existing water well system was undersized for future loading. More importantly, since there was only one well pump, the Center had no backup system in the event of pump failure. Finally, according to the engineers, the generators being used to provide electricity to the Center were not synchronized to operate in parallel, and whichever generator was in operation was already near its capacity and would not be able to handle the future loading.

Engineers from both agencies recommended that these utility shortfalls be addressed by installing a packaged wastewater treatment plant, adding a second well to be dedicated for domestic kitchen use, and obtaining additional electrical power by connecting to the city power grid. According to Corps engineers, the sewer, water, and electrical upgrades would cost approximately \$1.25 million, well within the \$1.4 million balance remaining under the interagency support agreement.

Utilities Upgrades Not Included in Original Scope of Work

The State Department agreed in a letter dated May 18, 2009 to allow the Corps to use the remaining funds to perform the utility upgrades recommended by its engineers. However, Corps officials then determined that they could not use the remaining funds because: 1) the utility upgrades were not included in the original scope of work for those funds, and 2) by then, Corps officials believed that the authority to expend the funds had expired. Consequently, the Army Corps of Engineers refused to move ahead, despite assurances from State Department officials that the funding was still valid and that the work could continue. After discussions with SIGAR, and further legal review, Corps legal staff agreed that the remaining funds had not expired and could be used to perform the recommended utility upgrades as long as the original scope of work was properly modified by the State Department.⁵

CONNECTING TO CITY ELECTRICAL GRID COULD PROVIDE SIGNIFICANT COST SAVINGS

According to the Army Corps of Engineers, connecting the Center to the city electrical grid could achieve significant cost savings. By one estimate, the savings due to lower fuel consumption would be between \$300,000 and \$600,000 per year. Although connection to the nearby grid would cost as much as \$300,000, that amount could be recovered within six to twelve months, depending on the stability of the voltage from the grid.⁶ Reducing the Center's operating costs would also help improve the Government of Afghanistan's ability to sustain the Center should U.S. support be reduced or eliminated in the future.

⁵ Since the interagency agreement was executed under section 632(b) of the Foreign Assistance Act of 1961, as amended, the obligation of funds occurred at the time the agreement between the Department of State and the Army Corps of Engineers was signed, rather than when the Corps obtained contracts to expend the funds.

⁶ During an inspection of the first phase of construction, a State Department engineer noted that another transformer would be required to connect to the nearest aerial power line.

The State Department has agreed to provide two years of operations and maintenance support for the Center--estimated at \$3 million per year, including the provision of electrical power. Along with recommending that the State Department address utility shortfalls before constructing the additional detention facility, engineers from the Army Corps of Engineers and the State Department specifically recommended connecting the Center to the city electrical grid and using the more expensive generators for backup power.



Photograph showing the proximity of the Counter-Narcotics Justice Center to Kabul city power lines. (Source: SIGAR)

CONCLUSION

In order for the \$11 million Counter-Narcotics Justice Center to operate as intended, it needs additional detention cells. Existing cells are filled to capacity and narcotics-related prisoners are being sent to other locations. Several factors have resulted in the delayed construction of additional detention facilities, while the State Department and the U.S. Army Corps of Engineers have been deadlocked over funding issues. Action is necessary to expedite the construction of these much-needed facilities. Furthermore, due to the Center's continued lack of connection to the Kabul electric grid, considerable cost savings are being forgone. Relieving the Center's dependency on expensive generators may provide cost savings to the United States estimated at \$300,000 to \$600,000 a year, and potentially improve long-term sustainability.

RECOMMENDATIONS

To expedite the construction of the planned detention facilities at the Counter-Narcotics Justice Center in Kabul, Afghanistan and to utilize approximately \$1.4 million in remaining U.S. appropriations we recommend that the Department of State's Bureau of International Narcotics and Law Enforcement Affairs:

- Amend the original scope of work under interagency support agreement number 2078728M32 with the U.S. Army Corps of Engineers-Afghanistan Engineer District to include the utility upgrades for the Counter-Narcotics Justice Center in Kabul, Afghanistan, that remain under that agreement, or reprogram those funds to accomplish the same work through another mechanism.
- Modify the interagency support agreement number 2078728M32 with the U.S. Army Corps of Engineers-Afghanistan Engineer District to increase the amount of funding to cover the costs of constructing the additional detention facility envisioned under the original second phase of construction for the Counter-Narcotics Justice Center in Kabul, Afghanistan, or alternatively use another mechanism.

COMMENTS

The Department of State's Bureau of International Narcotics and Law Enforcement Affairs and the U.S. Army Corps of Engineers-Afghanistan Engineer District provided written comments on a draft of this report, which are included in appendices II and III. The Department's Bureau of International Narcotics and Law Enforcement Affairs also provided technical comments which we incorporated in this report, as appropriate.

The Department's Bureau of International Narcotics and Law Enforcement Affairs generally concurred with the report's findings and recommendations. The Bureau stated that they generally agreed with both recommendations to amend the agreement with the U.S. Army Corps of Engineers but objected to the provision that funding be limited to a specific interagency support agreement. The Bureau suggested that a variety of mechanisms would present contractual and cost savings options for completing the utility upgrades and detention center construction. We did not intend to restrict the funding mechanism and modified the recommendation accordingly. U.S. Army Corps of Engineers-Afghanistan Engineer District-North concurred with the report's recommendations. The Commanding officer indicated that the Corps would work closely with the Bureau of International Narcotics and Law Enforcement Affairs to ensure completion of the expansion of the Counter-Narcotics Justice Center after execution of an amended or new interagency support agreement.

APPENDIX I: SCOPE AND METHODOLOGY

We conducted audit work during July 2009 in Washington, DC, and in Kabul, Afghanistan to determine why the construction of an additional detention facility at the Counter-Narcotics Justice Center in Kabul, Afghanistan had not been completed as intended. This audit is the first in a series of SIGAR audits addressing U.S. efforts to deter corruption and strengthen the rule of law.

To accomplish our objective, we reviewed correspondence and documentation provided by U.S. Government officials in Washington, DC, and at the U.S. Embassy in Kabul, Afghanistan; interviewed officials from the U.S. State Department's Bureau of International Narcotics and Law Enforcement Affairs in Washington, DC and at the U.S. Embassy in Kabul, Afghanistan, and from the U.S. Army Corps of Engineers-Afghanistan Engineer District in Kabul, Afghanistan; and conducted a site visit to the Counter-Narcotics Justice Center in Kabul. We consulted with Army Corps of Engineers legal officials to determine the validity of funding and researched provisions under section 632(b) of the Foreign Assistance Act of 1961, as amended.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. The audit was conducted by the Office of the Special Inspector General for Afghanistan Reconstruction under the authority of Public Law 110-181, and the Inspector General Act of 1978, as amended.

APPENDIX II: COMMENTS FROM DEPARTMENT OF STATE



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United States Department of State

Washington, D.C. 20520

www.state.gov

AUG 18 2009

TO: SIGAR/AIGA – John Brummet

FROM: INL – David T. Johnson 

SUBJECT: INL Comments on SIGAR's Draft Report on Counternarcotics
Justice Center Construction Delays (SIGAR-09-4), August 2009

The Bureau of International Narcotics and Law Enforcement Affairs (INL) appreciates the opportunity to provide comments on the draft report. INL generally agrees with both recommendations in the report, with one specific exception. Specific comments concerning the draft recommendations are as follows:

Recommendation 1: *The Department of State's Bureau of International Narcotics and Law Enforcement Affairs amend the original scope of work under interagency support agreement 2078728M32 to include the utility upgrades recommended by the US Army Corps of Engineers-Afghanistan Engineer District in order to utilize approximately \$1.4 million in U.S. appropriations remaining under that agreement, and to take advantage of the potential cost savings, estimated at \$300,000 to \$600,000 a year, of connecting to the Kabul city power grid.*

Recommendation 2: *The Department of State's Bureau of International Narcotics and Law Enforcement Affairs either further modify interagency support agreement number 2078728M32 to increase the amount of funding to cover the costs for the additional detention facility envisioned under the original second phase of construction, or alternatively issue a new interagency support agreement that includes the required amount of funding.*

INL generally agrees with both recommendations to amend the interagency support agreement with the US Army Corps of Engineers to utilize additional funding for the CNJC utilities upgrades. However, INL objects to the provision that funding for the additional detention facility be limited to a specific interagency support agreement, since doing so may impact the bureau's ability to contract with

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Afghan firms directly, and INL believes it is imperative to retain the freedom to use a variety of contractual mechanisms to meet the bureau's construction needs. Contracting directly with Afghan firms enables significant cost savings as well as providing much needed capacity building opportunities with local businesses.

INL had a number of additional technical comments that were addressed separately.

If you have any additional questions or concerns, please contact Patricia Yorkman of my staff at (202) 776-8806.

APPENDIX III: COMMENTS FROM U.S. ARMY CORPS OF ENGINEERS



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
US ARMY CORPS OF ENGINEERS
AFGHANISTAN ENGINEER DISTRICT - NORTH
APO AE 09356

CEAED-IR

August 6, 2009

MEMORANDUM FOR Special Inspector General for Afghanistan Reconstruction

SUBJECT: Comments to Report, SIGAR 09-4 – Actions Needed to Expedite Construction of Additional Detention Cells at the Counter-Narcotics Justice Center

1. This memorandum provides the U.S. Army Corps of Engineers, Afghanistan Engineer District – North (AED - North), response to the subject report.
2. Based on our review of the draft audit report, AED – North concurs with its recommendations. We will work closely with the Bureau of International Narcotics and Law Enforcement Affairs to ensure completion of the expansion of the Counter-Narcotics Justice Center, after execution of an amended or new Interagency/Support Agreement.
3. If you have any questions, please contact Mr. Mike Hatchett at telephone numbers (540) 662-4900, or DSN: 312-265-4900, or by e-mail at william.m.hatchett@usace.army.mil.

A handwritten signature in black ink, appearing to read "Michael McCormick", is positioned above the printed name.

MICHAEL McCORMICK
COL. EN
Commanding

(This report was conducted under the audit project code SIGAR-007A.)

SIGAR's Mission

The mission of the Special Inspector General for Afghanistan Reconstruction is to enhance oversight of programs for the reconstruction of Afghanistan by conducting independent and objective audits, inspections, and investigations on the use of taxpayer dollars and related funds. SIGAR works to provide accurate and balanced information, evaluations, analysis, and recommendations to help the U.S. Congress, U.S. agencies, and other decision-makers to make informed oversight, policy, and funding decisions to:

- improve effectiveness of the overall reconstruction strategy and its component programs;
- improve management and accountability over funds administered by U.S. and Afghan agencies and their contractors;
- improve contracting and contract management processes;
- prevent fraud, waste, and abuse; and
- advance U.S. interests in reconstructing Afghanistan.

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